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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 678

EMERSON F. MINNIE,

Petitioner,

vs.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Emerson F. Minnie respectfully shows unto this Honorable Court:

A.

Summary Statement of Matter Involved.

This action was originally brought to recover compensation under the Michigan Workmen's Compensation Act for injuries sustained by petitioner (plaintiff below) under the following circumstances.

On the dates hereinafter specified respondent Port Huron Terminal Company owned and operated a dock and warehouse on the west bank of the St. Clair River at Port Huron,

Michigan. On July 10 and 11, 1933, the steamship "Laurendoc" was moored at the mentioned dock discharging a cargo of baled paper. Petitioner was then assisting in the discharge of the cargo within the employ and direction of respondent Terminal Company. Discharge of the cargo was accomplished by means of hoists on the vessel which lifted the baled paper in slings from the hatches. While petitioner was standing on the vessel's deck signaling to one of the hoist operators a sling of bales swinging from one of the hoists struck petitioner and precipitated him from the deck to the dock below, where he was injured.

Petitioner seasonably filed claim against respondents for compensation under the Michigan Workmen's Compensation Act, respondent Fidelity and Casualty Company of New York being respondent Terminal Company's insurer under said Compensation Act. Respondents specially pleaded in answer to said claim that petitioner's injuries were sustained while petitioner was engaged in maritime employment and that the Michigan Department of Labor and Industry, which controls and applies the Michigan Workmen's Compensation Act, was accordingly without jurisdiction to grant petitioner compensation under said Act. This defense was not sustained by the Department and respondents appealed from the Department's ruling to the Supreme Court of Michigan. The latter court sustained the defense so pleaded, denied compensation to petitioner on the ground that his remedy was exclusively within admiralty or maritime jurisdiction, and entered judgment accordingly.

For the purpose of having such judgment reviewed by this Court petitioner accepts the finding or statement of facts of the Michigan Supreme Court, which is as follows:

> "Plaintiff was a longshoreman, employed by defendant terminal company in unloading a vessel at Port Huron. While upon the deck of the vessel and

about his work he was struck by a swinging hoist, lifting cargo from a hatch, precipitated to the wharf and injured. * * * The accident was on the deck of the vessel and the injury by fall upon the wharf."

B.

Reasons Relied on for Allowance of Writ.

I. The judgment of the Michigan Supreme Court is an inaccurate application of admiralty or maritime jurisdiction as declared and defined by applicable decisions of this Court.

II. The Michigan Supreme Court has, by its said judgment, inaccurately determined and decided a Federal question of substance in a way not in accord with applicable decisions of this Court, and has thereby determined that petitioner has rights within admiralty or maritime jurisdiction which he actually does not have and never possessed.

III. Rights and privileges were specially set up and claimed by respondents in this case under the Constitution and Laws of the United States as same relate to admiralty or maritime jurisdiction, and these alleged rights and privileges were inaccurately sustained and adjudged in favor of respondents.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Michigan, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, the necessary transcript of the record and proceedings in the case numbered and entitled on its docket No. 37945, E. F. Minnie, Plaintiff and Appellee, *v.* Port Huron Terminal Company and Fidelity and Casualty Company of New York, Defendants and Appel-

lants, and that the said judgment of the Supreme Court of the State of Michigan may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet and just.

And your petitioner will ever pray.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 678

EMERSON F. MINNIE,

Petitioner,

vs.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion of the Supreme Court of the State of Michigan is reported in 269 Michigan Reports, page 295, and it is set forth in the record which accompanies this petition and brief on pages 4-7.

II.

Jurisdiction.

1. Judicial Code, Section 237, as amended by Act of February 13, 1925, 43 Stat. 937.

2. The date of the judgment to be reviewed is December 10, 1934 (R. 7).

3. Petitioner invokes the jurisdiction of this Court which arises under subsection (b) of said section 237, and says that the question of whether his remedy exists exclusively under maritime or admiralty jurisdiction was presented as an affirmative defense by respondents (defendants below), not only in the trial tribunal (R. 2-3), but in the Supreme Court of Michigan (R. 4). This question was squarely decided in favor of respondents' contention by the Supreme Court of Michigan and, claiming his right to immunity from improper construction of that portion of the Constitution and Laws of the United States which relates to admiralty jurisdiction, petitioner submits that the issue so decided is a Federal question reviewable by this Court under the following authorities:

Grant Smith-Porter Ship Company v. *Rhode*, 257 U. S. 469, 66 L. Ed. 321.

State Industrial Commission v. *Nordenholt Corp.*, 259 U. S. 263, 66 L. Ed. 933.

Southern Pacific Company v. *Jensen*, 244 U. S. 205, 61 L. Ed. 1086.

Knickerbocker Ice Company v. *Stewart*, 253 U. S. 149, 64 L. Ed. 834.

In addition to the above we submit there is present here a most appealing reason which supports the here invoked jurisdiction. If petitioner were to abide by the present judgment of the Supreme Court of Michigan and proceed under Federal law, he unquestionably would be subjected to the unassailable defense (*L'Hote* v. *Crowell*, 286 U. S. 528; 76 L. Ed. 1270) that his injuries were sustained on land and that he accordingly has no maritime remedy. Thus, without the aid of the here invoked jurisdiction, we believe petitioner will lose all remedy for his injuries.

III.

Statement of the Case.

A full statement of the case appears in the petition for certiorari under heading "A" and, in the interest of brevity, the statement will not be repeated herein.

IV.

Specification of Errors.

1. The Michigan Supreme Court erred in holding that petitioner's injuries were maritime in nature.

2. The Michigan Supreme Court erred in holding that petitioner's remedy in the premises is controlled by Federal Law.

3. The Michigan Supreme Court erred in holding that petitioner, by virtue of such injuries, became possessed of rights under the Longshoremen's and Harbor Workers' Compensation Act.

V.

ARGUMENT.

By express finding of the Michigan Supreme Court petitioner's injuries were sustained on a wharf, an extension of the land, and his remedy accordingly does not lie within the jurisdiction of the maritime.

A.

Discussion of Opinion of Michigan Supreme Court.

The Michigan Supreme Court cites *Cooke* v. *Holland Furnace Co.*, 200 Mich. 192, and quotes the syllabus (which is

prepared by the reporter and not by the court) instead of the opinion. The syllabus says:

> "While the words 'accident' and 'injury' are not synonymous, the accident produced the injury and in point of time they *are* concurrent."

The opinion says:

> "While the words 'accident' and 'injury' are not synonymous, the accident produced the injury and in point of time they *were* concurrent."

Thus it will be seen the court there declared that Cooke's "accident" and "injury" in point of time *were* concurrent, and was not laying down a rule of law that "accident" and "injury" *are* concurrent. The syllabus is accordingly an extremely misleading concept of the opinion. There is no question in the *Cooke* case but that the accident and injury were concurrent; a bolt from an overhead track having fallen, hitting him on the head and fracturing his skull.

The Michigan Supreme Court next says that the Longshoremen's and Harbor Workers' Compensation Act (U. S. Code, Title 33, Sections 901-950) "must be considered", and inferentially suggests that petitioner has ample remedy under that Act. Our answer to this statement is that the Act itself excludes from its operation claims for injuries occurring on land. Sec. 903 of the Act says in part:

> "*Coverage* (a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law."

If the Longshoremen's and Harbor Workers' Compensation Act had not so expressly limited its operation to in-

juries occurring upon navigable waters it would have been unconstitutional (*Crowell* v. *Benson*, 285 U. S. 22, 76 L. Ed. 598).

The Michigan Supreme Court lastly cites *Smith & Son* v. *Taylor*, 276 U. S. 179, 72 L. Ed. 521, as authority for the proposition that the place where the cause occurs as distinguished from the place where the injury occurs, identifies the jurisdiction. The *Taylor* case was one where a longshoreman was at work on a portion of a wharf, from which he was knocked to the water, where he was later found dead. We contend for two separate reasons that this case is not an applicable authority here. These reasons, which we shall discuss in order, are:

1. The rule that a cause of action must arise on the water in order to bring it within maritime jurisdiction does not admit of a converse rule as determinative of State jurisdiction.

2. The first or jurisdictional injury in the *Taylor* case was sustained on the land.

1.

We understand the correct rule of law, deducible from *Southern P. Co.* v. *Jensen*, 244 U. S. 205, 61 L. Ed. 1086, is that the States have jurisdiction to grant remedies for injuries sustained at and near the border of the sea excepting injuries which complete a maritime cause of action. This being so, we submit that a maritime cause of action essentially differs, in so far as jurisdiction depends, from a local cause of action. A maritime cause of action, per the *Plymouth*, 3 Wall. 20, 18 L. Ed. 125, "must be complete within the locality upon which the jurisdiction depends—on the high seas or navigable water". On the other hand a cause of action governed by local law need not be complete on the land; it is essential only that the cause of action be

not a maritime one. It is therefore respectfully submitted that authorities which declare state jurisdiction over causes of action based on torts which, though commencing on land result in injury on water, are not authority for the proposition that injuries caused on water but sustained on land are exclusively within maritime jurisdiction.

2.

It is not amiss at this point to allude to Michigan rules of practice which led up to the findings of fact by the Michigan Supreme Court in this case. In *Roach* v. *Kelsey Wheel Co.*, 200 Mich. 303, the court quotes in full Rule V of Michigan Department of Labor and Industry, which rule requires written notice and proof of affirmative defenses an employer desires to make against a claim for compensation under the Michigan Compensation Act. Following this rule respondents gave notice of the defense which gives rise to this Federal question, viz:

> "If the plaintiff on the trial of said cause introduces any evidence tending to support his alleged claim, these defendants will especially insist in defense:
>
> "1. That the injury sustained by the plaintiff, if any, was sustained while the plaintiff was engaged in a maritime employment on the Great Lakes, and therefore the Department of Labor and Industry has no jurisdiction herein." (R. 2-3.)

Consequently we may safely observe that respondents, who carried the burden of establishing that petitioner's remedy, if any, was maritime in nature, placed in evidence all available proof which might directly or inferentially tend to establish that petitioner was injured, partially at least, before he came in contact with the wharf, or, using the language of *The Plymouth, supra*, that "the whole, or at least the substantial cause of action, arising out of the

wrong", we "complete within the locality" of the pleaded jurisdiction. Likewise we may safely aver that the Supreme Court of Michigan would have appropriately fortified its opinion by finding or alluding to evidence tending to show that petitioner was injured before he struck the wharf had any such evidence been submitted.

With these considerations in mind we respectfully call attention to the fact that the Michigan Supreme Court, whose findings of fact are here conclusively accepted, found that petitioner's injuries were sustained "by fall upon the wharf", and to the fact that this unequivocal finding effectually dissociates the *Taylor* case. In the latter case it was not found, even inferentially, that Taylor was uninjured before he struck the water. We believe on the other hand it is fairly and legitimately inferable that Taylor was knocked unconscious or at least dazed by the blow received on the land, because men are not usually killed or even injured by merely falling into water. The finding of fact by the lower court (5 La. App. 284) affirmatively shows that Taylor's body after its recovery showed bruises on the face, presumably received from the blow by the sling of soda sacks; affirmatively shows that some of the soda in the sacks that struck him was hard, and affirmatively shows that Taylor did not come up after striking the water. The blow received by Taylor on the land did, therefore, take immediate injurious effect. Furthermore, it was not claimed that Taylor was uninjured before he struck the water, the precise contention of plaintiff in error being as follows (72 L. Ed. 522):

> "It argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within admiralty jurisdiction."

This case therefore presents one feature which is completely absent from the *Taylor* case, viz., an unequivocal

finding of the exact locality where the jurisdictional injury occurred. Such finding is respectfully designated by petitioner as decisively distinguishing the *Taylor* case from the instant case.

B.

Discussion of Authorities Supporting Merits of Petitioner's Application for Writ of Certiorari.

We believe the leading and universally followed authority applicable to this question is *The Plymouth, supra.* In that case this Court said:

> "We can give, therefore, no particular weight or influence to the consideration that the injury in the present case originated from the negligence of the servants of the respondents on board of a vessel, except as evidence that it originated on navigable waters—the Chicago river; and, as we have seen, the simple fact that it originated there, but, the whole damage done upon land, the cause of action not being complete on navigable waters, affords no ground for the exercise of the admiralty jurisdiction. The negligence, of itself, furnishes no cause of action; it is damnum absque injuria."

> "The answer is, as already given; the whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon *which the jurisdiction depends*—on the high seas or navigable waters."

This rule was recognized in *Smith & Son* v. *Taylor, supra,* when this Court said:

> "If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated Sec. 2 of Art. 3. But if the cause of action arose upon the land, the state law is applicable."

In *Nogueira* v. *New York, N. H. & H. R. Co.*, 281 U. S. 134, 74 L. Ed. 759, this Court said:

> "In *State Industrial Commission* v. *Nordenholt Corp.* 259 U. S. 263, 66 L. Ed. 933, 25 A. L. R. 1013, 42 Sup. Ct. Rep. 473, 21 N. C. C. A. 862, a longshoreman was injured on a dock while engaged in unloading a vessel. It was decided that in such a case, where the injury took place on an extension of the land, the maritime law did not prescribe the liability and the local law had always governed. The Workmen's Compensation Law of the State was accordingly held to be applicable. The distinction was thus maintained between injuries on land and those which were suffered by persons engaged in maritime employment on a vessel in navigable waters."

In 1 R. C. L., page 417, the rule announced in the foregoing cases is stated as follows:

> "In determining whether a tort was committed on land or on water, consideration must be given to the place where the injury and damage arise rather than to the place where the negligent act was committed or had its inception."

The Michigan Supreme Court has itself announced and followed this rule in a case it now ignores—*Gordon* v. *Drake*, 193 Mich. 70. There the plaintiff was injured while attempting to scramble from a distressed vessel on navigable water to a wharf. The jurisdictional facts in that case simply cannot be distinguished from those found in the instant case, they having been thus related by the same court:

> "And it was the claim that, while the plaintiff was acting in obedience to the orders and command of the said pilot the said plaintiff was violently thrown against said pier with great force, and crushed between the said boat and pier by means whereof the plaintiff was

greatly hurt, injured, bruised, and wounded. There was evidence tending to support these allegations."

After careful review of applicable authority, including *The Plymouth, supra,* the Michigan Supreme Court thus declared the rule petitioner relies upon:

"The trend of the authorities seems to be to the effect that if the injury complained of happened on land, it is not cognizable in admiralty, even though it may have originated on the water. This springs from the well-known principle that there are two essential ingredients to a cause of action, viz., a wrong, and damage resulting from that wrong. Both must concur. To constitute a maritime cause of action, therefore, not only the wrong must originate on water, but the damage—the other necessary ingredient—must also happen on water. The injury in the instant case happened on the land."

We respectfully request that this Court note the identity of jurisdictional injury that exists between the above case and the instant case. The plaintiff in each case received his initial and jurisdictional injury by having been precipitated against a wharf from a vessel floating on navigable water.

Our search for cases paralleling the instant case on facts has located but one which might be said to oppose our position. We refer to *The Strabo,* 98 Fed. 998, where the libelant, while attempting to leave a vessel by means of a ladder joining the vessel and an adjacent wharf, was injured by falling upon the wharf. The court in that case, referring to language contained in *The Plymouth, supra,* said:

"The language employed in the Plymouth decision, and which was applicable to the circumstances of that case, does not justify such a conclusion. In this case it is highly probable that the libelant sustained some damage from nervous shock while precipitated through

> the air, and before he fell upon the wharf. A person of sensitive nervous organization would, without doubt receive such an injury; the injury commenced when, by the slipping of the ladder, the libelant was thrown into the air."

We submit that the reasoning of *The Strabo* is highly nebulous; likewise that its opposition to recognized authority enjoys but little judicial support. To find it "highly probable" that a person sustains "damage from nervous shock while precipitated through the air" gives but feeble support to a claim that "the substantial cause of action" is "complete within the locality upon which the jurisdiction depends." In *The Strabo* as well as in the instant case actionable injury was not inevitable because of what happened on shipboard. Resulting injury in each case depended upon the height of the fall, upon the force of the contact with the wharf, upon the nature of the surface of the wharf at the point of contact therewith, and particularly upon the position of each man at the time of such contact. Thus it may fairly be declared that the cause of action in each instance had not arisen and was not complete within the meaning of *The Plymouth, supra,* until contact with the land had actually taken place. By the same token petitioner's contact with the sling of bales did not take effect injuriously on shipboard, and the only injury resulting from that contact was a non-maritime one. These considerations, we submit, decisively show error on the part of the Michigan Supreme Court in its ruling that the contact between petitioner and the sling "took effect" within the meaning of that expression as used in *Smith & Son* v. *Taylor, supra.*

The reasoning set forth in *The Strabo* has, we believe, been decisively repudiated by this Court. We refer to this Court's reversal (286 U. S. 528-529, 76 L. Ed. 1270) of *L'Hote* v. *Crowell,* 54 F. (2) 212. In the last cited case the Circuit Court of Appeals, on authority of *The Strabo*

and a kindred case, held compensable under the Longshoremen's and Harbor Workers' Compensation Act an injury arising out of the following circumstances:

> "In loading the ship, Richard Payne (a longshoreman) had been working on the wharf, putting bales of burlap in a sling which was raised from the wharf by means of the ship's tackle and then lowered into the hold. He had been ordered to go on board to assist in closing the ship's hatches when all the bags had been removed from the wharf; and in carrying out that order he rode the last load up from the wharf. As the sling was swinging backward and forward, it struck against either the rail or the side of the ship, with the result that Richard Payne was knocked off the load back on the wharf and fatally injured."

In reversing this decision of the Circuit Court of Appeals this Court cited *Crowell* v. *Benson,* 285 U. S. 22, 76 L. Ed. 598, where it was pointed out with reference to the jurisdictional requirements of the Longshoremen's and Harbor Workers' Compensation Act:

> "These fundamental requirements are that the injury occurs upon the navigable waters of the United States and that the relation of master and servant exists. These conditions are indispensable to the application of the statute, not only because the Congress has so provided explicitly (Sec. 3), but also because the power of the Congress to enact the legislation turns upon the existence of these conditions.
>
> "In amending and revising the maritime law, the Congress cannot reach beyond the constitutional limits which are inherent in the admiralty and maritime jurisdiction. Unless the injuries to which the Act relates occur upon the navigable waters of the United States, they fall outside that jurisdiction."

This Court's reversal of *L'Hote* v. *Crowell, supra,* is, we submit, a final determination that a longshoreman, engaged

in maritime employment, who is precipitated from a vessel or instrumentality of a vessel to a wharf and there injured, has no maritime remedy.

By way of conclusion and for the purpose of giving full clarity to his argument petitioner concedes that any substantial injury to him, caused immediately by his contact with the sling of paper bales before he came in contact with the wharf, would have given rise to a maritime cause of action in his favor to the complete exclusion of local jurisdiction, regardless of whether he sustained additional injuries by striking the wharf. But the finding of the Michigan Supreme Court decisively negatives any such thought, and definitely determines that petitioner's injuries resulting from the untoward events on shipboard were sustained exclusively on land.

Conclusion.

A necessary conclusion from the facts as found in this case is, under the repeated decisions of this Court, that petitioner had no cause of action until *he* struck the wharf. If a firemen's net had been stretched over the wharf petitioner would have fallen harmlessly into it and would have possessed no cause of action, maritime or otherwise. Likewise if petitioner had been able to land on his feet or hands, or both, he probably, or at least possibly, would not have been actionably injured. Thus the negligence of the vessel's crew in permitting the sling to precipitate petitioner from the deck of the vessel was *damnum absque injuria* of itself, and a non-maritime injury became necessary to complete a cause of action based upon such negligence. When petitioner was injured as the result of such negligence he was completely without the jurisdiction of the maritime. We accordingly submit that the ruling of the Supreme Court of Michigan to the effect that petitioner's only remedy is maritime in nature, is patently erroneous.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that petitioner's immunity from improper construction of the Constitution and laws of the United States be not denied him, and that to such end a writ of certiorari should be granted in order that this Court may review the judgment of the Michigan Supreme Court and finally reverse it.

Respectfully submitted,

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